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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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1998 Biennial Regulatory Review -)
Streamlined Contributor Reporting Requirements)
Associated with Administration of)
Telecommunications Relay Services, North)
American Numbering Plan, Local Number)
Portability, and Universal Service Support)
Mechanisms)

CC Docket No. 98-171

Comments of Ursus Telecom Corporation

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October 30, 1998

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Comments of Ursus Telecom Corporation

Ursus Telecom Corporation ("Ursus"), by its undersigned counsel, respectfully submits these comments in response to the Notice of Proposed Rulemaking ("*Notice*") issued by the Federal Communications Commission ("FCC" or "the Commission") in the above-captioned proceeding.^{1/}

In this pleading, Ursus comments only on one of the FCC's proposed changes contained in its proposed common reporting worksheet. The Commission seeks public comment on a proposal to streamline fee filing worksheets into one common worksheet. While Ursus applauds the FCC's intention to streamline its reporting worksheets, Ursus notes that the proposed new worksheet instructions contain at least one substantive change that will impose universal service contribution obligations on carriers that currently are not required to contribute. This proposed change violates the Administrative Procedure Act because it fails to provide adequate notice to allow interested

^{1/} 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 98-171, released September 25, 1998 ("*Notice*").

parties such as Ursus to comment meaningfully on the proposed change. In addition, the proposed change exceeds the Commission's statutory authority under section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), directly contradicts earlier findings by the Commission in the universal service proceeding, and is contrary to the public interest.

I. Background

In this proceeding, the Commission suggests consolidating the collection of common carrier data on a single worksheet that would replace the existing worksheets, forms, or other methods of collecting data for the Universal Service Fund ("USF"), the Telecommunications Relay Services ("TRS") Fund, and the cost recovery mechanisms for the North American Numbering Plan ("NANP") and local number portability ("LNP") administrations. These forms currently contain similar (but not identical) information and must be filed at different times and intervals and at different locations.

The *Notice* states that the Commission is merely seeking to streamline reporting requirements and that its proposals will not alter the *substance* of what carriers report. However, the instructions for the proposed Telecommunications Reporting Worksheet ("TRW") contain language that, if adopted, would require certain carriers effectively to contribute to universal service mechanisms even though they are exempted from contributing by statute and by Commission regulations.

II. The Commission Provides Inadequate Notice That it Is Proposing a Substantive Change to its Universal Service Support Mechanism

In the *Notice*, the Commission states that it is proposing only "limited changes" and does "not seek to revisit the substantive requirements of the four support and cost recovery mechanisms."^{2/} The Commission does not mention at any point in the body of the *Notice* any modifications to the USF support mechanisms; therefore, one could reasonably conclude that it intended to make no substantive changes to carriers' USF obligations. Nevertheless, the TRW instructions, if adopted, would effectively expand the number of carriers that would have to contribute to USF. In particular, the instructions would require certain telecommunications service providers to pay USF-related charges even though they are exempt from contributing to the USF.^{3/} This proposal constitutes a significant substantive change to the universal service support mechanisms for which the Commission failed to provide adequate notice.^{4/} Therefore, the Commission should withdraw this proposed change.

The *Notice* does not contain, as required by the Administrative Procedure Act, "either the terms or substance of the proposed rule or a description of the subjects and issues involved" regarding the proposed changes to the universal service support mechanisms, nor does the Commission adequately explain the proposed change.^{5/} Agency notice must "describe the range of

^{2/} *Notice* at ¶¶ 3,4.

^{3/} *Id.* at 9.

^{4/} 5 U.S.C. § 553(b)(3).

^{5/} *Small Refinery Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 548 (D.C. Cir. 1983) (EPA notice that it might make unspecified changes in the definition of small refinery is too general to be adequate).

alternatives being considered with reasonable specificity; otherwise, interested parties will not know what to comment on, and notice will not lead to better informed agency decisionmaking."^{6/} The *Notice* fails to meet this standard. The body of the *Notice* does not even *mention* that the Commission is considering significant changes to carriers' universal service contribution obligations. Moreover, the *Notice* fails to discuss the issues raised by the proposed modification. As a result, Ursus cannot base its comments on any stated rationale put forward by the Commission.^{7/} The proposed rulemaking therefore violates the Administrative Procedure Act.

III. The Commission Lacks Authority to Impose Universal Service Obligations on Exempt Carriers

The proposed worksheet instructions would, for the first time, provide explicit Commission endorsement for certain IXC's practice of "passing through" their USF contribution obligations to customers through surcharges. The Commission's rules previously have not dictated how carriers (other than incumbent LECs) can or should recover USF contribution costs. The instructions for the proposed worksheet, however, state that carriers "may choose to pass on contributed amounts to end-users *including exempt telecommunications service providers*."^{8/}

^{6/} *National Tour Brokers Ass'n v. U.S.*, 591 F.2d 896 (D.C. Cir. 1978) (The purpose of the notice requirement is to allow the agency to benefit from the expertise and ideas of interested parties and to ensure that the agency maintains a flexible and open-minded attitude toward its own rules.)

^{7/} *TRW Instructions* at 9 (emphasis added).

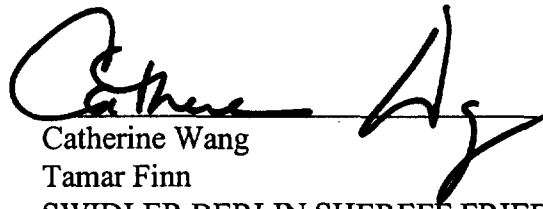
^{8/} "[W]e conclude that public safety and local government entities . . . will not be required to contribute because of the restrictive eligibility requirements for these services and because of the important public safety and welfare functions for which these services are used." *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, released May 8, 1998, ¶ 800.

This language improperly suggests that certain telecommunications providers may now be required to pay additional universal service-related charges although they are exempt from USF contribution. These service providers are exempt because, as discussed above, the Commission does not have the statutory authority to require universal service contribution or because the Commission has decided that it is in the public interest for such service providers to be exempt from contribution obligations. By allowing underlying carriers to pass through their universal service contributions to these entities, the Commission is, in effect, burdening these exempt telecommunications providers with universal service obligations. Allowing underlying carriers to pass through such charges could have potentially harmful anticompetitive effects, particularly if the exempt carriers are competing in a market against providers that do not have to contribute to the USF.

IV. Conclusion

Ursus applauds the Commission's efforts to streamline its reporting requirements, but urges the Commission not to make changes that violate the Administrative Procedure Act or subject to universal service requirements those carriers that are otherwise exempt under statute and FCC regulation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Catherine Wang", followed by a large, stylized flourish or initial.

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October 30, 1998

CERTIFICATE OF SERVICE


I, Deborah Walker, hereby certify that I have on this 30th day of October, 1998, served copies of the foregoing comments of Ursus Telecom Corporation, on the following via hand delivery:

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